IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9897 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAVIDSHA RASHIDSHA FAKIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9897 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

By of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat City on 2.1.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, (hereinafter referred to as "the PASA Act" for short). The petitioner is declared as "dangerous person" under the PASA Act.

The grounds mentioned and served upon the petitioner placed on record, denotes that, in all, four offences under sec. 379 of the IPC were registered against the petitioner before Surat Police Station on 17.11.2002, 18.11.2002, 20.11.2002 and 26.11.2002. It appears that, thereafter on 23.12.2002 two statements of the witnesses were recorded whose identity has been kept concealed as per sec. 9(2) of the PASA Act in which the petitioner alleged to have beaten the witnesses and attempted to sale properties which were stolen by him. The witnesses were beaten and threatened by the petitioner so as to disturbed the public order. Those statements came to be verified by the detaining authority on 21.12.2002 and the order came to be passed on 2.1.2003.

Ld. advocate Mr. Pandya for Ms. KU Mishra for the petitioner and ld. AGP Mr. Chauhan were heard at length.

Amongst various grounds raised on behalf of the petitioner, it transpires that this order requires to be quashed and set aside only on the ground of delay in passing the order. As per the view taken by this court in the matter of Thakore Girishji @ Gidhaji Jenaji vs. District Magistrate & Ors., as reported in 2002(1) GCD p. 338 and in the matter of Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad City as reported in 1997(1) GLH p. 381 and the view taken by the Apex Court in the matter of Pradeep N. Paturkar vs. S. Rammurthi, as reported in AIR 1994 SC 656 it is clear that while passing the order of detention it is incumbent upon the authority to explain the delay satisfactorily. As seen from the records and the grounds placed on record, the third offence came to be registered against the petitioner on 20.11.2002 and last and fourth offence came to be registered against the petitioner on 26.11.2002, however, the statements of the witnesses alleged to have stated that the petitioner threatened and beaten the witnesses came to be recorded only on 23.12.2002 and verified on 31.12.2002. This delay is fatal for the passing of the order to detain the petitioner under the PASA Act though the petitioner is declared as "dangerous person" within the meaning of the PASA Act. Therefore,

the order impugned is required to be quashed and set aside on this ground alone.

In the above view of the matter, this special civil application is allowed. The order passed by the Police Commissioner, Surat city on 2.1.2003 against the petitioner for his detention under the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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